

IMPLEMENTATION TEAM MEETING NOTES

November 21, 1996, 9:30 a.m.-3:30 p.m.
NATIONAL MARINE FISHERIES SERVICE OFFICES
PORTLAND, OREGON

I. Greeting and Introductions.

The November 21 meeting of the Implementation Team, held at the National Marine Fisheries Service's offices in Portland, Oregon, was chaired by Donna Darm and Brian Brown of NMFS. The agenda for the November 21 meeting and a list of attendees are attached as Enclosures A and B. The following is a summary (not a verbatim transcript) of items discussed at the meeting, together with actions taken on those items.

Darm spent a few minutes going through the agenda; Joe Dos Santos of Montana raised the following question: now that we're no longer in the Biological Opinion/in-season management period, what's the most effective ways for regional sovereigns to interact with the federal operators? Certainly we recognize that operations year-round can effect our ability to achieve the Bi-Op's goals, and the Opinion does address at least some operations outside the salmon migration season, Darm replied. The Technical Management Team and Implementation Team still provide a forum for addressing operational issues; also, what we discussed in the CBFWA setting was to use the Fish Passage Center as a clearinghouse for discussion of operations outside the migration season, and for requests from the fish and wildlife managers to the federal operating agencies, said Darm. Non-fish management entities should work with their state agencies to influence any proposed operations.

II. Assignments from the Executive Committee.

A. Rules and Procedures. The IT spent the rest of the morning discussing the draft rules and procedures for the Executive Committee, Implementation Team and technical teams; the goal of today's discussion, said Darm, is to produce a document we can present to the Executive Committee. Any sections upon which consensus cannot be reached will be [bracketed]. The following is a legislative draft, with the revisions agreed to during the meeting underlined, and deletions marked with brackets [].

[]
REGIONAL ORGANIZATION (RO)

Executive Committee, Implementation Team and Technical Teams, COE
RULES AND PROCEDURES

I. Purpose and Scope

Initially, the Organization provides an intergovernmental forum for regional discussions and decisions on operation and system configuration of the Federal Columbia River Power System (FCRPS), with the goal of developing consensus among members. It is a forum for federal decision-makers to consult with state and tribal sovereigns in the Columbia River Basin on federal decisions, and for federal decision makers to explain the bases for their decisions. The focus of the Organization is implementation of the NMFS Biological Opinion on Operation of the FCRPS [and on funding matters related to FCRPS operations and configuration contained in the Bonneville Budget Agreement], but the Organization will consider all relevant aspects of hydropower operations and system configuration as appropriate. [The Implementation Organization will ensure that the Fish and Wildlife Program of the Northwest Power Planning Council is taken into account to the fullest extent practicable]. The members may agree in the future to expand the scope of issues considered by the Organization beyond hydropower.

II. Organization.

The Organization is hierarchical and will consist of a senior policy body known as the Executive Committee, a senior program managers' body known as the Implementation Team, and various technical teams and work groups. The technical teams will include a Technical Management Team, a Dissolved Gas Team, a System Configuration Team, a PATH Workgroup, an Integrated Scientific Review Team and such ad hoc technical teams and work groups as the Implementation Team may deem necessary from time to time to address specific issues. Appendix A depicts the relationship between the Executive Committee, Implementation Team and Technical Teams, and between the Organization and other regional entities and processes.

III. Goals.

- a) To promote fulfillment of related federal trust responsibilities to Columbia Basin Indian tribes.
- b) To ensure the broadest possible technical and policy participation in federal planning, funding and implementation decisions regarding operation and configuration of the FCRPS [].
- c) To develop agreement and resolve disputes on operations to be implemented by the federal hydropower operating agencies and other actions related to FCRPS operations and system configuration. []
- d) When agreement is not reached, to ensure that the bases for federal decisions are fully explained.
- e) To promote coordination between implementation of the NMFS and USFWS Biological Opinions and actions taken under other related regional plans and fora to restore Columbia River Basin fish and wildlife.
- f) To take into account, to the fullest extent practicable, the Fish and Wildlife Program of the Northwest Power Planning Council.

IV. Consensus.

Consensus is defined as the lack of objection. The members will make all reasonable efforts to achieve consensus. When consensus cannot be achieved in one of the technical teams or workgroups, the objecting member may request that the issue be elevated to the Implementation Team. When consensus cannot be achieved among the [] members of the Implementation Team, the objecting member may request that the issue be elevated to the Executive Committee []. Rules for elevating issues are detailed in Section XI, Decision making and Dispute Resolution.

V. Participation.

[] Members of a body of the Organization may participate, through designated representatives or their alternates, in all discussions of that body; present proposals; register objection, concurrence or abstention on decisions before the body; and request that a decision be elevated to the next level. The members will make efforts to enable tribal representatives to have a meaningful opportunity to participate in the work of the Organization.

VI. Membership.

a) Executive Committee

[Regular members include state and tribal sovereigns with management authority over fish and wildlife resources in the Columbia River Basin. The states and tribes include the members of the Columbia Basin Fish and Wildlife Authority, the Yakama Indian Nation and the state of Alaska. Federal members include the National Marine Fisheries Service and U.S. Fish & Wildlife Service. The Northwest Power Planning Council, Bonneville Power Administration, the U.S. Army Corps of Engineers, Bureau of Reclamation, Idaho Power Company and Mid-Columbia Public Utility Districts are ex officio members. See Sections VI.b and XI.

{Ex officio members are those entities whose participation is not only desirable, but vital to the discussion of and accountability for Columbia Basin operational issues and decisions. In addition, these ex officio members exercise ultimate decision making authority regarding implementation of proposals or recommendations generated by the sovereigns and federal fishery agencies. Full participation [specifically, the ability to prematurely object to a proposal generated by a sovereign, USFWS or NMFS] could frustrate the collaborative development, consideration and potential resolution of an issue, and therefore the purpose and intent of this forum (see also XI.f)}

OR

[Members of all bodies of the Organization include state and tribal sovereigns with management authority over fish and wildlife resources in the Columbia River Basin, the National Marine Fisheries Service, U.S. Fish & Wildlife Service, Bonneville Power Administration, U.S. Army Corps of Engineers, Bureau of Reclamation, Northwest Power Planning Council, Idaho Power Company and the Mid-Columbia Public Utility Districts. The states and tribes include the members of the Columbia Basin Fish and Wildlife Authority, the Yakama Indian Nation and the State of Alaska.

b) Implementation Team.

[Regular members include all regular members of the Executive Committee. Ex officio members of the Executive Committee will either be regular members or ex officio members of the Implementation Team, depending on the issue before the Implementation Team (Section XI on decision making and dispute resolution describes in more detail on which issues these members will be considered ex officio)].

b.1) Implementation Team Responsibilities.

c) Technical Teams.

Regular members include all regular and ex officio members of the Executive Committee.

VII. Representation.

a) All [regular and ex officio] members of any body of the Organization must designate a regular and an alternate representative in order for their representative to participate. Two or more members may designate the same representative.

b) A list of designated representatives and alternates will be maintained at the offices of the Columbia Basin Fish and Wildlife Authority and at NMFS's office in Portland.

VIII. Conduct of Meetings.

a) The meetings of the Executive Committee and Implementation Team will be chaired by the designated representative [or alternate of the National Marine Fisheries Service] OR [of the regular members on an annual rotating basis or by the Vice Chair, which position shall also be filled on an annual rotating basis from the membership]. The meetings of the Technical Teams shall be chaired by a member or members [selected by the Implementation Team]. The meetings of the Executive Committee and Implementation Team may be facilitated.

b) Unless requested by the Chair or by a designated representative or alternate present at the meeting, only designated representatives or their alternates may participate in the discussions, make proposals, register objection, concurrence or abstention on a decision or request that a decision be elevated to the next level. Only designated representatives or their alternates, identified at the start of the meeting, will be seated at the table.

c) When decisions are proposed for adoption by one of the bodies of the Organization, the Chair will identify, and the meeting notes will reflect, the member making the proposal. After discussion of the proposal, the Chair will determine whether the issue is to be decided at that meeting. If an issue is to be decided, the Chair will poll the members for their concurrence, objection or abstention. If an issue is to be postponed or is otherwise resolved, the Chair will identify the further action or the resolution. The meeting notes will reflect the above information.

d) Meeting agendas will be developed by the meeting Chair, with consideration of member input, and distributed to members at least one week prior to the meeting. Members wishing to include an issue for decision on the agenda should provide a statement of the issue to be distributed with the agenda. Materials to be handed out at the meeting will be faxed to regular phone participants before the meeting starts. The agenda will clearly identify decision items.

e) Meeting notes will be taken at all meetings, included with the agenda and materials for the next meeting, and approved at that meeting. Meeting notes will be available for inspection and copying at the offices of the Columbia Basin Fish and Wildlife Authority and at NMFS's offices in Portland.

f) Meetings of the bodies of the Organization will be open to the public. The Chair may call for public comment as appropriate during the meetings. Time will be reserved at the end of each meeting for members of the public to comment.

IX. Reporting and Oversight.

a) The Executive Committee will oversee the work of the Implementation Team, which will report on its activities at Executive Committee meetings

b) The Implementation Team will oversee the work of the various technical teams and workgroups, which will report on their activities at Implementation Team meetings

c) All bodies of the Organization will operate under the same rules of procedure, except that technical teams may propose special rules to address unique circumstances. The Implementation Team will approve any special rules of the technical teams.

X. Frequency of Meetings.

a) The Executive Committee will meet at least once quarterly. The Committee may convene via teleconference if appropriate to consider in-season management disputes elevated by the Implementation Team

b) The Implementation Team will meet at least once monthly. During the smolt migration season, the Implementation Team will also meet weekly by conference call if necessary to resolve any disputes raised from the Technical Management Team

c) The technical teams will meet as often as necessary to complete their work, or as requested by the Implementation Team

d) Any member may request a meeting of any of the bodies of the Organization in addition to the regularly scheduled meetings. Such meetings will be held at the discretion of the Chair.

XI. Decision making and Dispute Resolution.

a) Any [regular] member of any body of the Organization may propose a technical decision for adoption by that body. Members will make all reasonable efforts to make technical proposals first in the appropriate technical team to allow issues to be fully developed. The Chair of the Implementation Team or the Executive Committee may decline to entertain a technical proposal that has not been considered by the appropriate technical team.

b) Any [regular] member of any body of the Organization may propose a policy issue for adoption by that body. Members will make all reasonable efforts to ensure that related technical issues have been fully aired in the appropriate technical team and/or the Implementation Team. Members will make all reasonable efforts not to raise policy issues that have already been

decided at that level.

c) At the January Implementation Team meeting the Team will identify those Implementation issues that can reasonably be decided in advance of the salmon and steelhead migration season. The Implementation Team will assign technical issues as appropriate to technical teams or the ISAB for advice or additional information. The Implementation Team will seek to decide as many implementation issues as possible in advance of the migration season and to elevate those issues that cannot be decided to the spring Executive Committee meeting. Members will make all reasonable efforts during the migration season not to raise issues that were raised in advance of the migration season. The Chair of the Implementation Team may decline to entertain such an issue.

d) When consensus cannot be achieved in a technical team or Workgroup, an objecting member may ask that the issue be raised to the Implementation Team for resolution. The technical team will formulate a written description of the disagreement. When disputed issues are raised, both the proponent and the objecting party may make presentations.

e) Members will make all reasonable efforts to present an issue for decision in writing at least two weeks prior to the meeting at which they request that the issue be addressed. The Chair may decline to entertain an issue that is not sufficiently well-defined to allow a decision to be made.

[f) In the Implementation Team, federal hydropower operating agencies, Idaho Power Company and the Mid-Columbia PUDs may participate as full members, including registering concurrence, objection or abstention, except when the issue involves a dispute that has been raised from the Technical Management Team].

g) When consensus cannot be achieved in the Implementation Team, if the decision is one of in-season management, the member with authority to make the decision will make the final decision. If the decision is other than an in-season management decision, the objecting member may request that it be elevated to the Executive Committee. The Implementation Team will formulate a written statement of the issue. The objecting party will provide a written statement supporting that party's objection to the proposed measure or action. Any other members may provide additional statements in support of or opposition to this statement.

h) In the absence of consensus, the party with authority will make the final decision. Nothing in these rules alters the legal authorities of any of the parties.

i) A quorum consists of those members' designated representative or their alternate, present and registering consent, objection or abstention to a decision made at a noticed meeting or conference call.

j) A member entity must be present through a designated representative or alternate to register consent, objection or abstention on a decision.

The Rules and Procedures discussion continued after the following presentations until the end of the meeting, by which time the group managed to work its way through Sections I, II, III, IV and V. Some participants expressed concern about the slow rate of progress on the document, given the need to have an acceptable draft for presentation at the December Executive Committee

meeting. It was agreed to convene a supplemental Implementation Team meeting to discuss Rules and Procedures on Wednesday, November 27. The next regular IT meeting was set for Wednesday, November 5.

B. Emergency Operations and Procedures. BPA's Phil Thor distributed Enclosure E, a draft document outlining proposed emergency operations protocols for attachment to the Technical Management Team's Water Management Plan. At the last TMT meeting, it was decided to re-convene on November 27 to talk about issues raised in the course of the 1996 operational year, said Thor. Also at that last meeting, a TMT subgroup spent part of the afternoon reviewing this draft emergency procedures document; I have incorporated most of the comments received at that meeting into this draft, he explained. Unresolved issues have been italicized and bracketed.

The TMT needs to discuss this further, but there are some issues TMT is not going to be able to resolve, Thor continued. I'm not sure what kind of position the IT wants to be in with reference to emergency procedures by the time of the December Executive Committee meeting, but that's probably the discussion you need to have at today's meeting.

After some minutes of further discussion, Michael Powelson of NPPC/Oregon said he does not think it will be possible to adequately refine Thor's draft emergency procedures document in time for presentation at the Dec. 10-11 EC meeting. Michele DeHart of the Fish Passage Center concurred, saying the states and tribes are still in the process of reviewing the document's technical content. It sounds like we should keep this topic on the IT's agenda, with the goal of producing recommended emergency procedures for presentation at the spring Executive Committee meeting, as part of the 1997 operations discussion, said Darm. No disagreements were raised to Darm's suggested course of action.

C. 1996 Operations Review. Substantive discussion of this agenda item was deferred to the December 5 IT meeting.

D. MOA Implementation. Substantive discussion of this agenda item was deferred to the December 5 IT meeting.

III. December Executive Committee Meeting Agenda.

Darm distributed the following draft schedule for the two-day Executive Committee meeting on December 10-11 at the Northwest Power Planning Council's Portland offices:

Tuesday, Dec. 10 (10 a.m.-5 p.m.)

I. Introductions and Review of Agenda (10:05-10:15)

II. Dispute Resolution

RESOLVE Report -- Suzanne Orenstein and Mark Eames (10:15-11:00)

Facilitated Discussion (11:00-11:45)

LUNCH 11:45-1:00

III. Review of 1996 Operations and Biological Implications (2:00-4:00)

Wednesday, Dec. 11 (9 a.m.-3:30 p.m.)

IV. Presentation of Draft "Rules of Procedure" (Decision Item?) (9:00-10:30)
Facilitated Discussion (10:30-noon)

LUNCH noon-1:00

V. Recommendations from the Implementation Team Regarding Implementation of Memorandum of Agreement (1:00-2:00)

VI. Economic Report on Independent Economic Advisory Board (IEAB) -- Mike Field and Joyce Cohen (2:00-3:10)

VII. Summary of EC Assignments to IT, Next Meeting Date and Possible Agenda Items (3:10-3:30)

TIME PERMITTING:

VIII. Overview of the Multi-Year Implementation Plan Document and Review Process (Donna Darm (30 minutes).

Darm spent a few minutes going through the agenda, beginning with Item II, the dispute resolution presentation. Copies of the RESOLVE report were mailed out yesterday, she said; essentially, it concludes that virtually everyone in the region feels an alternative dispute resolution mechanism is both workable and necessary. Orenstein characterizes many of the existing fora, such as the IT and CBFWA, as "dispute avoidance" fora, rather than dispute resolution fora. The question is, do we want to engage in a negotiated discussion about rules and procedures, what status they have, whose they are, whether participation in this forum results in true consensus and agreement among all of the sovereigns in the region, or whether this is more a forum for the federal operating agencies in which the states and tribes are simply invited participants? said Darm. NMFS would prefer that it be the former, rather than the latter.

So what we will be looking for at the meeting, Darm continued, is some sort of buy-in from the Executive Committee to the concept of a regional meeting, including all of the regional sovereigns, to talk about an alternative dispute resolution mechanism -- what kinds of issues, forms and participants it will involve.

Moving on, she continued through the EC agenda, asking whether anyone had any questions, concerns or additions to the schedule. It was agreed that, if at all possible, the presentation on the MYIP process should be made at the December meeting. Keith Kutchins of the Sho-Ban Tribes highlighted one particular issue that has emerged from the MYIP development process: whether or not the 1999 Biological Opinion recovery path decision can be made sooner, given the fact that it isn't especially likely that the region will have significantly better information on which to base that decision in 1999. He recommended that the EC be given a heads-up about this issue at its December meeting, so that it could consider the topic more fully at its spring meeting; Kutchins suggested that an IT/SCT subgroup be convened to draft a short summary of the issue prior to the Dec. 10-11 EC meeting. If we can get that together in time for review at the

December 5

IT meeting, we'll consider giving it to the Executive Committee, said Darm, and we will make time for the MYIP briefing during the EC's Wednesday agenda.

One informational item, said Darm: I got a call this morning from Rep. Elizabeth Furse's fish and wildlife staff person this morning, and another from Rep. Mike Crapo's fish person, both saying that they are preparing a letter to COE complaining about 1996 operations. I'm not sure exactly what the contents of the letter will be, but one item I know they were unhappy about was the spill curtailment at The Dalles; they also expressed a general unhappiness about the Corps' lack of responsiveness to regional operational requests. Crapo and Furse asked me whether we can add a discussion of their letter to the Executive Committee agenda, Darm said.

Various IT participants objected to the idea of including the Crapo/Furse letter as a separate EC agenda item, particularly since no one in the region has seen the letter yet. A review of 1996 operations is already included in the December 10 agenda; Brian Brown of NMFS added that the Technical Management Team is putting together a list of issues that need to be resolved prior to the 1997 migration season. After a few minutes of discussion, it was agreed to leave this as an open question until others in the region have a chance to peruse the Crapo/Furse letter.

IV. ISAB Review of PATH Conclusion Document.

The reason for this agenda item, said Brown, is the question of what the expectations are for the Independent Scientific Advisory Board's involvement in the review of PATH work products. Individual members of the ISAB have been involved in the PATH process in an advisory capacity; they have had some input into the content of those draft work products as they currently exist, and in that sense, at least, there has been an ongoing dialogue between ISAB and PATH. PATH's Phase I report, still in draft form and due to be finalized in March, was also provided to the ISAB, primarily in an FYI capacity. However, the question has been raised: are there specific things the IT wants to direct ISAB to review in that document or other PATH work products, such as the 30-page conclusions list from PATH's Retrospective Analysis? The latter document is to be formally presented to IT at its December meeting; do we want to send it out ahead of time for ISAB review? asked Brown.

One clarification, said ISAB coordinator Chip McConnaha: while some ISAB members have attended PATH meetings, I don't want to give the impression that they've been active participants in the PATH process -- if they had been, it would be difficult to conduct an independent review of PATH's work products.

Chris Toole suggested that PATH be allowed to complete its ongoing peer review process on the Conclusions document before sending it to the ISAB for review, if there are still outstanding issues the region or the IT feel need to be resolved, it can be forwarded to ISAB once the peer review process is complete. After a few minutes of further discussion, no objections were raised to Toole's suggested course of action. What about the PATH's Phase I report? asked Brown. You're referring to the 600-page report I talked about at the last IT meeting, said Toole -- that report was completed in September and has been submitted to PATH's academic peer review group -- mostly academics from around the country. We have received comments from that group, but those comments have not yet been incorporated into the document -- we don't plan to revise it again until March. Some of the chapters don't need much additional work; some

obviously do. So you really don't have a final product at this time? asked one participant. That's correct, Toole replied, and even by March, some pieces of the document could continue to undergo fairly extensive revisions.

One of the reasons this topic came up, said Darm, is the fact that NMFS's Science Center has some serious questions about using indicator stocks to tell us what's happening with Snake River stocks. Much of the PATH Retrospective Analysis relies on trends among the Snake River stocks compared to stocks elsewhere in the basin, and the Science Center has some real concerns about that approach. As far as I know, the current peer review of the PATH report does not include a review of the scientific merits of that basic methodology, she said. I would agree that they may not be approaching that in quite the way the Science Center is suggesting, replied Toole, but I think it would be wrong to say the peer review is ignoring that basic question.

After a few minutes of further discussion, it was agreed to let the current PATH peer review process take its course; comments received during this exercise will be incorporated into a new draft in March 1997. Toole said he would prefer to wait until those comments are integrated into a finished document before it is submitted for ISAB review; no objections were raised to this course of action.

I don't think there's much to be gained by asking the ISAB to review the Conclusions document at this point, summarized Brown. Once we have a finished draft of the Phase I report in March, it may be useful to ask the ISAB to look at whatever substantive questions emerge from the peer review process. In the meantime, we'll ask PATH to continue its work, and to present its draft Conclusions document at the next IT meeting; any issues or questions that arise from that presentation can also be referred to the ISAB. I would also ask the NMFS Science Center to clearly articulate its methodological concern, said McConnaha; I think that's a good idea, Darm replied.

V. Public Comment/Other.

Keith Kutchins resurrected a concern about the Shoshone-Bannock Tribes' ability, from a financial/manpower standpoint, to participate adequately in all the meetings of the Regional Organization, particularly IT meetings. Darm suggested once again that funding should be made available to enable state and tribal participation in the various coordination processes, perhaps using the Pacific Fishery Management Council funding process as a model. Our goal is to get everyone sitting down at the same table, working toward consensus, she said. That sounds good, said Kutchins, but I've been participating in this process for eight years, and we have yet to see the kind of financial assistance you're referring to. If the CBFWA members came forward with a proposal to use some portion of the fish and wildlife budget to help each of the states and tribes fund a full-time employee and travel expenses to ensure full participation in these processes, I'll bet the Council would approve it, said Darm.

VI. Next Meeting Date.

A supplemental Implementation Team meeting to discuss Rules and Procedures was set for Wednesday, November 27, from noon to 4 p.m. in NMFS's Portland offices. The next regular IT meeting was set for Thursday, December 5 from 9:30 a.m. to 3:30 p.m., also at NMFS. Meeting notes prepared by Jeff Kuechle, BPA contractor.